

Surveillance and Its Chilling Effect on Political Rights

By Alan Barth

IT IS good news—in a limited way—that the Army has moved to transfer to the Department of Justice control over the surveillance it has maintained of civilian activities which it thought liable to lead to civil disturbances. The transfer, just disclosed, was reportedly ordered about six weeks ago in a letter sent to domestic military intelligence commanders by the Army's adjutant general.

There are, however, two reasons for a morsel of skepticism about the reality of this transfer. One is that it seems to have about as many legal loopholes or reservations as an official promise to withhold air support in Cambodia; for as long as the Army is expected to assume responsibility for handling riots in the country's big cities, it will have a justification of sorts for collecting the data it deems necessary to prevent or prepare for trouble. The second reason for being skeptical that the transfer will make much difference is that the FBI, which will presumably take over the surveillance job from military intelligence, is just about as primitive and unsophisticated in this area as the Army itself.

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THE rationale under which the Army collected data on the indubitably legitimate activities of such civilians as Senator Adlai Stevenson III and Congressman Abner Mikva was that they expressed opinions critical of the government's policy in Vietnam and opinions that seemed slightly inflammatory about racial injustice; and so from the Army's point of view they looked like troublemakers on whom it would be a good idea to keep an eye. You can get some notion of the level of sophistication in military surveillance from the fact that the adjutant general found it necessary to issue an explicit instruction that "individuals and organizations do not become of concern to the Department of the Army solely because they oppose government policy."

But the FBI has tended through all the years of its operation under Mr. J. Edgar Hoover to take a similarly simplistic view of political dissidence. It has always been

disposed to confuse nonconformity with disloyalty and rhetorical extravagance with revolution. And so it keeps tabs on over-emotional folk signers as though they were spies or saboteurs and benches at the bonnet of student radicals.

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THERE IS an important difference between riots and demonstrations—often overlooked by political investigators whether in civilian or military attire. Riots are rarely planned. They burst into flame, like fires in basements where oil-soaked rags have been allowed to accumulate for too long a period. The riots that followed the assassination of Dr. Martin Luther King were not of his design or making, although the assassination undoubtedly sparked a conflagration the fuel for which had long been allowed to pile up unventilated. Nevertheless, the FBI, for a long time, had been spying assiduously on Dr. King's private life.

Demonstrations are different. They have to be planned. There is always some danger that they will lead to a measure of civil disorder if they are not handled discretely. The first consideration to be borne in mind about a political demonstration is that it is legitimate and a protected part of the American political process so long as it conforms to reasonable rules. By definition, there is nothing covert about it. The proper role of government authorities in respect to demonstrations is not to prevent them but to see to it that they proceed in orderly fashion without interference and without undue disruption of normal community life. They are, essentially, a local police problem.

"In countries where associations are free, secret societies are unknown," Alexis de Tocqueville wrote. "In America there are numerous factions, but no conspiracies." No doubt this glowing observation is no longer altogether true. The fact is that today there are groups and individuals ready to resort to violence and terror in order to force their way. So a degree of vigilance is necessary.

If there must be surveillance to prevent terrorism, it is better, of course, to have it

done by a civilian than by a military agency if for no other reason than that the Army is too ponderous, too powerful and too authoritarian in structure. Except in the case of armed insurrection, properly trained and equipped local police forces or National Guardsmen can fill the need more swiftly and more flexibly.

A civilian investigating force is, besides, more likely to be sensitive to traditions of civil liberty than military men. But surveillance, to what ever degree it is maintained, has a chilling influence on the exercise of political freedom. It suggests, inevitably, that associations or ideas which incur official disapproval may have unpleasant consequences—may result in some sort of public exposure or loss of a job or the closing of opportunities. Not everyone has the hardihood to defy governmental authority.

Surveillance generates an atmosphere much more totalitarian than democratic. It impinges on privacy, puts a premium on conformity. The only agency qualified to undertake it at all is an agency committed to confining it within the narrowest possible limits.

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